IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3907 of 1989

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

COMMANDANT STATE RESERVE POLICFORCE GROUP - VII

Appearance:

MR YN OZA for Petitioner No. 1

MR KP RAWAL, AGP, for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.1 In this petition the petitioner has challenged the order dated 20.4.1989 passed by the respondent no.1 whereby the respondent authority sought to recover Rs.20592/- as economic rent from the petitioner for the period from 1.5.1981 to 30.4.1987 and for monthly recovery ofRs.291/from the pay of the petitioner.

2.1 The petitioner was appointed as Armed Police Constable and thereafter he was promoted to the post of Police Sub Inspector in the year 1987. Though no specific details are given in the petition, it seems that the petitioner had been allotted a quarter at Nadiad and thereafter when he was transferred to Ahmedabad, he did not vacate the quarter. Earlier an order of recovery of economic rent was passed against the petitioner, but the same came to be cancelled by respondent no.1 vide order dated 10.5.1988 on the understanding that the suit filed by the petitioner before the Civil Court would be withdrawn. It is alleged that thereafter the respondent passed the order dated 20.3.1989 for recovery of the amount as aforesaid. Hence the petitioner has approached this Court by way of this petition.

3.1 This matter was admitted 16.6.1989 by passing the following roder:

"Rule. To be heard with Sp. C.A. No.2591/87.

Ad-interim stay of the recovery of the amount of Rs.22,592/- for the period from May 1, 1981 to April 30, 1987, on the condition that the petitioner pays or deposit the amount of rent at the rate of 7% (seven per cent) for the said period on or before July 1989."

4.1 A bare perusal of the petition discloses that a vague petition is filed before this Court giving no details about the circumstances in which the impugned order came to be passed. It is also not mentioned as to under what circumstances the petitioner retained the quarter. Ordinarily if a head of the family is transferred, it is expected that the family members would join unless some extraordinary reason is there. No such reason is disclosed by the petitioner. The only inference that can be drawn is that the petitioner is interested in occupying the quarter and therefore he has not vacated the same.

4.2 Ms Shah for the petitioner relied upon Rule 223 of Gujarat Police Manual which pertains to normal housing arrangements. She submitted that it is mandatory on the part of the respondent to provide rent free accommodation to all police officers of and below the rank of Inspector. At the relevant point of time the petitioner was Armed Police Constable and in the year 1987 the petitioner was promoted as Police Sub Inspector which is

a class II post. Therefore, it is clear that the Government is not required to give rent free accommodation to a Police Constable or Armed Police Constab le. Hence there is no substance in the submission of the learned counsel for the petitioner.

4.3 Assuming that the petitioner is eligible for rent free accommodation, on transfer the government officer is required to vacate the rent free accommodation. Accordingly on his transfer the petitioner should have vacated the premises. Therefore, even that ground is not available to the petitioner.

4.4 The State Government issued a resolution dated 22.10.82 laying down criteria for occupying the quarter. In case of transfer, if an employee retains the government quarter without prior permission, then he has to pay rent. It was noticed that in many cases employees continue to occupy the quarters unauthorisedly after their transfer, as a result of which the employees who were eligible to get the government quarter were deprived of the housing facility, causing lot of inconvenience and loss. They were required to hire residential accommodation at extraordinary cost. From cities if the employees are transferred and are retaining the quarters, the innocent eligible and the persons appointed/transferred to cities would suffer a lot. The Court has to keep this in mind. The innocent hopeful allottees are not before the Court and their interest is also required to be protected. When the decision is taken which is made applicable to all, there should be no interference. In a petition under Articles 226 and 227 of the Constitution of India, above aspects are required to be taken into consideration. For unauthorised occupation, rent fixed by the competent authority must be recovered. State should not suffer at the hands of the people who were asked to see that others are acting according to law and they cannot be permitted to breach the policy which is in the interest of all the employees.

4.5 The Division Bench of this Court in LPA No.608 of 1997 decided on 12.6.2000 considered the question of retention of the quarter beyond the period of two months in case of transfer of a police personnel who was held to be unauthorised occupant and considering the resolution of 1982, Court held that the retention of a quarter beyond the period of two months was unauthorised and occupant was required to pay rent. Thus, the petitioner continued to occupy the quarter without any authority and must be treated as unauthorised occupant of the quarter and therefore liable to pay rent in accordance with law.

4.6 This Court by order dated 13.7.2004 passed in Special Civil Application No.7867/93 has taken similar view which is squarely applicable to the facts of the present case.

4.6 In any case, once a government servant is transferred, he has to vacate the quarter as per the policy of the government, failing which he is required to pay the amount fixed by the government.

5.1 Learned counsel for the petitioner submitted that the petitioner has already retired and no recovery may be effected from him after a lapse of many years. This contention cannot be accepted inasmuch as merely because the petitioner has retired from service would not absolve him from paying the amount due to the respondent. It is required to be noted that this Court has already decided the issue on 30th June 2000. Even thereafter the petitioner could have paid the amount which he has not done. Therefore, now this court cannot direct for waiver of the amount in question.

5.2 Ms Shah for Mr. Yatin Oza states that in spite of the efforts, the petitioner could not be contacted and therefore she could not verify whether the payment in question has already been made. Therefore it is directed that the respondent shall be entitled to recover the amount which may be due from him in case the same is not already paid. Moreover, if the amount is not already paid the respondent shall also be entitled to recover interest at the rate of 9% from 20.4.1989 till the amount is repaid. However, it is observed that if the petitioner makes a representation to the authority requesting for suitable installments for repayment, the concerned authority shall consider the same.

11. In the result, there are no merits in the petition and the same is required to be rejected. Accordingly the petition is rejected. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

[K.S. JHAVERI, J.]
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